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UNITED STATES DISTRICT COURT

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Western District of WashingtonCLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA
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DEC 04 2018

In the Matter of the Search of

(Briefly describe the property to be searched
or identify the person by name and address)INFORMATION ASSOCIATED WITH
FACEBOOK USER ID 186659552692611

Case No.

MJ18-5278

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A, attached hereto and incorporated herein by reference.

located in the Northern District of California, there is now concealed (identify the person or describe the property to be seized):

See Attachment B, attached hereto and incorporated by reference herein.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

evidence of a crime;
 contraband, fruits of crime, or other items illegally possessed;
 property designed for use, intended for use, or used in committing a crime;
 a person to be arrested or a person who is unlawfully restrained.

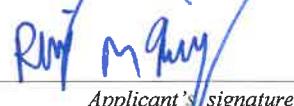
The search is related to a violation of:

Code Section	Offense Description
18 USC § 922(g)(1), 924(a) (2); and Title 26 USC § 5861	Felon in Possession of Firearm; Possession of Unregistered Firearm

The application is based on these facts:

See Affidavit of FBI Special Agent Richard McKinney, attached hereto and incorporated by reference herein.

Continued on the attached sheet.
 Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



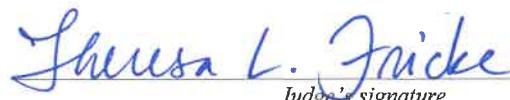
Applicant's signature

Richard McKinney, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 12/04/2018



Judge's signature

City and state: Tacoma, Washington

Hon. Theresa L. Fricke, United States Magistrate Judge

Printed name and title

1 **AFFIDAVIT**
2 STATE OF WASHINGTON)
3) ss
4 COUNTY OF PIERCE)

6 I, Richard McKinney, being first duly sworn, hereby depose and state as follows:

BACKGROUND

8 1. I have been employed as a Special Agent of the FBI since August 2016
9 and am currently assigned to the Seattle Division's Olympia Resident Agency. I have
10 assisted in numerous investigations including but not limited to violent crime, drugs,
11 financial crimes, and cases of child exploitation. As a federal agent, I am authorized to
12 investigate violations of laws of the United States and to execute warrants issued under
13 the authority of the United States.

14 2. The facts in this affidavit come from my personal observations, my
15 training and experience, and information obtained from other agents and witnesses. This
16 affidavit is intended to show merely that there is sufficient probable cause for the
17 requested warrant and does not set forth all of my knowledge about this matter.

18 3. Based on my training and experience and the facts as set forth in this
19 affidavit, there is probable cause to believe that violations of Title 18 USC § 922(g)(1),
20 924(a)(2); and Title 26 USC § 5861 have been committed by Daniel C. Phillips. There is
21 also probable cause to search the Facebook account of Phillips, more fully described in
22 Attachment A, for evidence and instrumentalities of these crimes as described in
23 Attachment B.

PURPOSE OF AFFIDAVIT

25 4. I make this affidavit in support of an application for a search warrant for
26 information associated with the following Facebook account:

(1) Facebook user ID 186659552692611 (Subject Account), which for the reasons provided below, is believed to belong to Daniel C. Phillips.

1 5. All of the requested information is stored at premises owned, maintained,
2 controlled, or operated by Facebook, a social networking company headquartered in
3 Menlo Park, California. The information to be searched is described in the following
4 paragraphs and in Attachment A. This affidavit is made in support of an application for a
5 search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require
6 Facebook to disclose to the government records and other information in its possession,
7 pertaining to the subscriber or customer associated with Subject Account.

PRIOR APPLICATIONS

9 6. This is the first such application to search the Subject Account in this
10 investigation.

STATEMENT OF PROBABLE CAUSE

12 7. In 2017, the FBI received information from a confidential informant (CI)
13 who reported that Daniel Phillips was building silencers at his residence at 6410 Olympic
14 Highway, Aberdeen, Washington. Washington State Department of Licensing records
15 indicated that the residence of 6410 Olympic Highway was the address of record for
16 Daniel Phillips. CI also told the FBI that Phillips is heavily armed and has firearms
17 stored at his residence. CI has no criminal history and did not receive any benefit for the
18 information, but was providing it out of concern for community safety.

19 8. Phillips provided CI with the login information and password for his
20 Facebook account, the Subject Account, to prove he trusted her. CI was not able to get in
21 contact with Phillips for a couple of days in the middle of March 2017 and decided to
22 login into the Subject Account using the login information from Phillips. Upon accessing
23 the Subject Account, which is under the account name “DC Cooper,” CI saw lengthy
24 messages between Phillips and his small group of Facebook friends regarding the selling
25 of heroin, methamphetamine, Xanax, and gun silencers.

26 9. Phillips told the CI that he uses auto parts to build firearm silencers. Based
27 observing communications found in the Subject Account, CI believes Phillips trades
28 silencers for drugs to support his addiction. The CI further reported that Phillips

1 possesses multiple firearms and operates numerous security cameras on his property.
2 Phillips had previously provided the CI with the combination to his gun safe.

3 10. In April 2017, Detective Schrader of Grays Harbor County Sheriff's Office
4 reviewed the publicly available Facebook page of the Subject Account. Schrader
5 observed that the page was created in March 2017 and identified the account holder as
6 having five Facebook "friends." Schrader was familiar with four of the friends as people
7 who had previously been arrested and/or investigated for drug trafficking in the Grays
8 Harbor County area.

9 11. In August 2018, a property owner who lives in close proximity to Phillips's
10 residence on Olympic Highway reported to local law enforcement to having heard
11 repeated gunshots on multiple days coming from Phillips's residence, which is located in
12 a wooded, residential neighborhood.

13 12. On September 20, 2018, based in part on the facts summarized above, law
14 enforcement obtained a search warrant from Grays Harbor District Court for Phillips's
15 residence at 6410 Olympic Highway, Aberdeen, Washington. The warrant was executed
16 by state and federal law enforcement officers on September 21, 2018.

17 13. The search of Phillips's residence confirmed much of the CI's information,
18 including his possession of multiple firearms and silencers, and the combination to
19 Phillips's gun safe. In addition, the Facebook Messenger application was still active on
20 Phillips's computer revealing a conversation between the Subject Account and "JW"
21 discussing "xanies." Based on my training and experience, I know that "xanies" is a slang
22 term for Xanax, a controlled substance.

23 14. Based upon the above stated facts, I believe a search of the Subject Account
24 will reveal additional evidence and instrumentalities of illegal firearm transactions.

BACKGROUND ON FACEBOOK

26 15. As I know from training and experience, and from information provided by
27 other law enforcement members, Facebook owns and operates a free-access social
28 networking website of the same name that can be accessed at <http://www.facebook.com>.

1 Facebook allows its users to establish accounts with Facebook, and users can then use
 2 their accounts to share written news, photographs, videos, and other information with
 3 other Facebook users, and sometimes with the general public.

4 16. Facebook asks users to provide basic contact and personal identifying
 5 information to Facebook, either during the registration process or thereafter. This
 6 information may include the user's full name, birth date, gender, contact e-mail
 7 addresses, Facebook passwords, physical address (including city, state, and zip code),
 8 telephone numbers, screen names, websites, and other personal identifiers. Facebook
 9 also assigns a user identification number to each account.

10 17. Facebook users may join one or more groups or networks to connect and
 11 interact with other users who are members of the same group or network. Facebook
 12 assigns a group identification number to each group. A Facebook user can also connect
 13 directly with individual Facebook users by sending each user a "Friend Request." If the
 14 recipient of a "Friend Request" accepts the request, then the two users will become
 15 "Friends" for purposes of Facebook and can exchange communications or view
 16 information about each other. Each Facebook user's account includes a list of that user's
 17 "Friends" and a "News Feed," which highlights information about the user's "Friends,"
 18 such as profile changes, upcoming events, and birthdays.

19 18. Facebook users can select different levels of privacy for the
 20 communications and information associated with their Facebook accounts. By adjusting
 21 these privacy settings, a Facebook user can make information available only to himself or
 22 herself, to particular Facebook users, or to anyone with access to the Internet, including
 23 people who are not Facebook users. A Facebook user can also create "lists" of Facebook
 24 friends to facilitate the application of these privacy settings. Facebook accounts also
 25 include other account settings that users can adjust to control, for example, the types of
 26 notifications they receive from Facebook.

27 19. Facebook users can create profiles that include photographs, lists of
 28 personal interests, and other information. Facebook users can also post "status" updates

1 about their whereabouts and actions, as well as links to videos, photographs, articles, and
2 other items available elsewhere on the Internet. Facebook users can also post information
3 about upcoming “events,” such as social occasions, by listing the event’s time, location,
4 host, and guest list. In addition, Facebook users can “check in” to particular locations or
5 add their geographic locations to their Facebook posts, thereby revealing their geographic
6 locations at particular dates and times. A particular user’s profile page also includes a
7 “Wall,” which is a space where the user and his or her “Friends” can post messages,
8 attachments, and links that will typically be visible to anyone who can view the user’s
9 profile.

10 20. Facebook allows users to upload photos and videos, which may include any
11 metadata such as location that the user transmitted when s/he uploaded the photo or
12 video. It also provides users the ability to “tag” (i.e., label) other Facebook users in a
13 photo or video. When a user is tagged in a photo or video, he or she receives a
14 notification of the tag and a link to see the photo or video. For Facebook’s purposes, the
15 photos and videos associated with a user’s account will include all photos and videos
16 uploaded by that user that have not been deleted, as well as all photos and videos
17 uploaded by any user that have that user tagged in them.

18 21. Facebook users can exchange private messages on Facebook with other
19 users. Those messages are stored by Facebook unless deleted by the user. Facebook
20 users can also post comments on the Facebook profiles of other users or on their own
21 profiles; such comments are typically associated with a specific posting or item on the
22 profile. In addition, Facebook has a chat feature that allows users to send and receive
23 instant messages through Facebook Messenger. These chat communications are stored in
24 the chat history for the account. Facebook also has Video and Voice Calling features,
25 and although Facebook does not record the calls themselves, it does keep records of the
26 date of each call.

27 22. If a Facebook user does not want to interact with another user on Facebook,
28 the first user can “block” the second user from seeing his or her account.

1 23. Facebook has a “like” feature that allows users to give positive feedback or
 2 connect to particular pages. Facebook users can “like” Facebook posts or updates, as
 3 well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook
 4 users can also become “fans” of particular Facebook pages.

5 24. Facebook has a search function that enables its users to search Facebook for
 6 keywords, usernames, or pages, among other things.

7 25. Each Facebook account has an activity log, which is a list of the user’s
 8 posts and other Facebook activities from the inception of the account to the present. The
 9 activity log includes stories and photos that the user has been tagged in, as well as
 10 connections made through the account, such as “liking” a Facebook page or adding
 11 someone as a friend. The activity log is visible to the user but cannot be viewed by
 12 people who visit the user’s Facebook page.

13 26. Facebook also has a Marketplace feature, which allows users to post free
 14 classified ads. Users can post items for sale, housing, jobs, and other items on the
 15 Marketplace.

16 27. In addition to the applications described above, Facebook also provides its
 17 users with access to thousands of other applications (“apps”) on the Facebook platform.
 18 When a Facebook user accesses or uses one of these applications, an update about that
 19 the user’s access or use of that application may appear on the user’s profile page.

20 28. Facebook also retains Internet Protocol (“IP”) logs for a given user ID or IP
 21 address. These logs may contain information about the actions taken by the user ID or IP
 22 address on Facebook, including information about the type of action, the date and time of
 23 the action, and the user ID and IP address associated with the action. For example, if a
 24 user views a Facebook profile, that user’s IP log would reflect the fact that the user
 25 viewed the profile, and would show when and from what IP address the user did so.

26 29. Social networking providers like Facebook typically retain additional
 27 information about their users’ accounts, such as information about the length of service
 28 (including start date), the types of service utilized, and the means and source of any

1 payments associated with the service (including any credit card or bank account number).
2 In some cases, Facebook users may communicate directly with Facebook about issues
3 relating to their accounts, such as technical problems, billing inquiries, or complaints
4 from other users. Social networking providers like Facebook typically retain records
5 about such communications, including records of contacts between the user and the
6 provider's support services, as well as records of any actions taken by the provider or
7 user as a result of the communications.

8 30. As explained herein, information stored in connection with a Facebook
9 account may provide crucial evidence of the "who, what, why, when, where, and how" of
10 the criminal conduct under investigation, thus enabling the United States to establish and
11 prove each element or alternatively, to exclude the innocent from further suspicion. In
12 my training and experience, a Facebook user's IP log, stored electronic communications,
13 and other data retained by Facebook, can indicate who has used or controlled the
14 Facebook account. This "user attribution" evidence is analogous to the search for
15 "indicia of occupancy" while executing a search warrant at a residence. For example,
16 profile contact information, private messaging logs, status updates, and tagged photos
17 (and the data associated with the foregoing, such as date and time) may be evidence of
18 who used or controlled the Facebook account at a relevant time. Further, Facebook
19 account activity can show how and when the account was accessed or used. For
20 example, as described herein, Facebook logs the Internet Protocol (IP) addresses from
21 which users access their accounts along with the time and date. By determining the
22 physical location associated with the logged IP addresses, investigators can understand
23 the chronological and geographic context of the account access and use relating to the
24 crime under investigation. Such information allows investigators to understand the
25 geographic and chronological context of Facebook access, use, and events relating to the
26 crime under investigation. Additionally, Facebook builds geo-location into some of its
27 services. Geo-location allows, for example, users to "tag" their location in posts and
28 Facebook "friends" to locate each other. This geographic and timeline information may

1 tend to either inculpate or exculpate the Facebook account owner. Last, Facebook
2 account activity may provide relevant insight into the Facebook account owner's state of
3 mind as it relates to the offense under investigation. For example, information on the
4 Facebook account may indicate the owner's motive and intent to commit a crime (e.g.,
5 information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting
6 account information in an effort to conceal evidence from law enforcement).

7 31. Therefore, the computers of Facebook are likely to contain all the material
8 described above, including stored electronic communications and information concerning
9 subscribers and their use of Facebook, such as account access information, transaction
10 information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

12 32. I anticipate executing this warrant under the Electronic Communications
13 Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by
14 using the warrant to require Facebook to disclose to the government copies of the records
15 and other information (including the content of communications) particularly described in
16 Section I of Attachment B. Upon receipt of the information described in Section I of
17 Attachment B, government-authorized persons will review that information to locate the
18 items described in Section II of Attachment B.

CONCLUSION

20 33. Based on the forgoing, I believe there is probable cause to search the
21 Subject Account, where the government is likely to find evidence and instrumentalities of
22 crimes in violation of Title 18 USC § 922(g)(1), 924(a)(2); and Title 26 USC § 5861. I
23 therefore request that the Court issue the proposed search warrant.

24 34. This Court has jurisdiction to issue the requested warrant because it is “a
25 court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a),
26 (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States . . .
27 that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

35. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

DATED this 4 day of December, 2018.

~~RICHARD MCKINNEY, AFFIANT~~
Special Agent
Federal Bureau of Investigation

The above-named agent provided a sworn statement attesting to the truth of the contents of the foregoing affidavit on this 4th day of December, 2018.

Theresa L. Fricke
HON. THERESA L. FRICKE
United States Magistrate Judge

ATTACHMENT A

Property to Be Searched

3 This warrant applies to information associated with the following account
4 identified by Facebook user ID 186659552692611 (Subject Account), for all such
5 information that is stored at premises owned, maintained, controlled, or operated by
6 Facebook, a company headquartered in Menlo Park, California.

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ATTACHMENT B

Particular Things to be Seized

I. To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. (“Facebook”), regardless of whether such information is located within or outside of the United States, including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user ID listed in Attachment A:

- (a) All contact and personal identifying information, for the user of the Subject Account, including full name, user identification number, birth date, gender, contact e-mail addresses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.
- (b) All activity logs for the account and all other documents showing the user's posts and other Facebook activities from March 1, 2017, to the present.
- (c) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them from March 1, 2017, to the present, including Exchangeable Image File ("EXIF") data and any other metadata associated with those photos and videos;
- (d) All profile information; News Feed information; status updates; videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification numbers; future and past event postings; rejected "Friend" requests; comments; gifts; pokes; tags; and information about the user's access and use of Facebook applications;

1 (e) All records or other information regarding the devices and internet
2 browsers associated with, or used in connection with, that user ID,
3 including the hardware model, operating system version, unique device
4 identifiers, mobile network information, and user agent string;

5 (f) All other records and contents of communications and messages made or
6 received by the user from March 1, 2017, to the present, including all
7 Messenger activity, private messages, chat history, video and voice calling
8 history, and pending “Friend” requests;

9 (g) All “check ins” and other location information;

10 (h) All IP logs, including all records of the IP addresses that logged into the
11 account;

12 (i) All records of the account’s usage of the “Like” feature, including all
13 Facebook posts and all non-Facebook webpages and content that the user
14 has “liked”;

15 (j) All information about the Facebook pages that the account is or was a “fan”
16 of;

17 (k) All past and present lists of friends created by the account;

18 (l) All records of Facebook searches performed by the account from March 1,
19 2017, to the present.

20 (m) All information about the user’s access and use of Facebook Marketplace;

21 (n) The types of service utilized by the user;

22 (o) The length of service (including start date) and the means and source of any
23 payments associated with the service (including any credit card or bank
24 account number);

25 (p) All privacy settings and other account settings, including privacy settings
26 for individual Facebook posts and activities, and all records showing which
27 Facebook users have been blocked by the account;

28

(q) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken.

Facebook is hereby ordered to disclose the above information to the government within 14 days of service of this warrant.

II. Information to be seized by the government

7 All information described above in Section I that constitutes evidence and
8 instrumentalities of violations of Title 18 USC § 922(g)(1), 924(a)(2); and Title 26 USC
9 § 5861 involving Daniel Phillips since March 1, 2017 to the present, including, for each
10 user ID identified on Attachment A, information pertaining to the following matters:

- (a) Evidence revealing details pertaining to transactions associated with the sale of illegal drugs and firearms.
- (b) Evidence indicating how and when the Facebook account was accessed or used, to determine the chronological and geographic context of account access, use, and events relating to the crime under investigation and to the Facebook account owner;
- (c) Evidence indicating the Facebook account owner's state of mind as it relates to the crime under investigation;
- (d) The identity of the person(s) who created or used the user ID, including records that help reveal the whereabouts of such person(s).

1 **CERTIFICATE OF AUTHENTICITY OF DOMESTIC BUSINESS**

2 **RECORDS PURSUANT TO FEDERAL RULE OF EVIDENCE 902(11)**

3 I, _____, attest, under penalties of perjury
4 under the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the
5 information contained in this declaration is true and correct. I am employed by
6 Facebook, and my official title is _____. I am a custodian
7 of records for Facebook. I state that each of the records attached hereto is the original
8 record or a true duplicate of the original record in the custody of Facebook, and that I am
9 the custodian of the attached records consisting of _____ (pages/CDs/kilobytes). I
10 further state that:

11 a. all records attached to this certificate were made at or near the time of the
12 occurrence of the matter set forth, by, or from information transmitted by, a person with
13 knowledge of those matters;

14 b. such records were kept in the ordinary course of a regularly conducted business
15 activity of Facebook; and

16 c. such records were made by Facebook as a regular practice.

17 I further state that this certification is intended to satisfy Rule 902(11) of the
18 Federal Rules of Evidence.

19
20 Date

 Signature